

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-6155

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-6155

KENNETH O. EKELUND,

Plaintiff-Appellant,

-against-

ELLIOT RICHARDSON, SECRETARY OF COMMERCE OF
THE UNITED STATES, ROBERT J. BLACKWELL, ASSIST-
ANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS,
ARTHUR B. ENGEL, SUPERINTENDENT OF THE UNITED
STATES MERCHANT MARINE ACADEMY AND THE UNITED
STATES MERCHANT MARINE ACADEMY,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

JOINT APPENDIX

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Eastern District of New York
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Appellant

PAGINATION AS IN ORIGINAL COPY

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-6155

T-6499

DATE	FILINGS - PROCEEDINGS
9-20-76	Filed copies of docket entries and notice of appeal
10-6-76	Received docket fee
10-6-76	Lewis and Nishman filed Form C, p/s
10-6-76	Lewis and Nishman filed Form D, p/s
10-7-76	Filed scheduling order # 1 (CAMP)
10-20-76	Filed motion for extension of time to file record and briefs, etc appellant, p/s
10-22-76	Filed scheduling order # 2 (CAMP)
11-18-76	Filed motion for an extension of time to file record and briefs and appendices, appellant, p/s
11-24-76	Filed scheduling order # 3 (CAMP)
12-13-76	Filed motion for an extension of time to file record and briefs and appendices, appellant, p/s
12-14-76	Filed scheduling order # 4 (CAMP) (in the absence of exceptional circumstances there will be no further extensions)
1-26-77	Received record (Original papers of district court)
2-4-77	Filed motion for an extension of time to file record, appellant, p/s
2-7-77	Filed scheduling order # 5; in the absence of exceptional circumstances there will be no further extensions (CAMP)
2-11-77	Filed record (Original papers of district court)
2-22-77	Filed order substituting Steven J. Hyman for Lewis & Nishman as counsel for appellant
2-22-77	Received stipulation for an extension of time to file appellant's brief and appendix
2-23-77	Filed scheduling order # 6: appellant's brief and joint appendix by 3-11-77; appellee's brief by 3-31-77; argument of appeal ready to be heard week of 4-11-77 (CAMP)
3-9-77	Filed motion for extension of time to file appellant's brief and appendix, p/s
3-11-77	Filed scheduling order # 7: appellant's brief and appendix by 3-25-77; appellee's brief by 4-25-77; argument of appeal ready to be heard week of 5-2-77 (CAMP)

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FILINGS - PROCEEDINGS

Filed scheduling order #7: Appellant's brief by 3-25-77; Appellee's brief by 4-25-77; argument of the appeal to be ready to be heard during week of 5-2-77: It is ordered that there will be no further extensions in the absence of exceptional circumstances

A-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
KENNETH O. EKELUND,

Plaintiff,

-against-

THE SECRETARY of COMMERCE,
et al.,

Defendants.
-----X

76 C 1069
MEMORANDUM
incorporating
FINDINGS of FACT
and
ORDER

Appearances:

ROBERT W. NISHMAN, Esq. (Messrs. LEWIS &
NISHMAN of Counsel) for plaintiff

CONSTANCE M. VECELLIO, Esq. (DAVID G. TRAGER,
Esq., United States Attorney, of Counsel)
for defendants

DOOLING, D.J.

Plaintiff, a midshipman member of the 1976 graduating class at the United States Merchant Marine Academy at Kings Point, was charged with the Class I offense of the possession of dangerous drugs in that inspection of his room and personal effects resulted in the discovery of a quantity of marihuana packaged in plastic bags. USMMA Midshipmen Regulations 02105(1) defined dangerous drugs as including substances so classified by State or Federal law, and Article 02105(2) provided that a midshipman formally charged and found guilty by an Executive Board, converted

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by the Superintendent of the Academy of illegal possession, use or transfer of any dangerous drug, either on board the Academy or ashore, would be subject to dismissal. (See Regulations Article 03107-#105, listing the dozen Class I offenses.) Regulations Article 03101(3)(a) defines Class I offenses as grave and deliberate violations of the standards of conduct which are completely unacceptable and may result in dismissal, suspension, or other, less severe, authorized disciplinary action, as appropriate. Class I offenses are accorded a special procedure (Regulations Article 03103) obviously designed to secure investigation and report to the Superintendent before a letter of formal charges is authorized and thereafter to require a hearing before an Executive Board convened for the case, a recommendation by the Board to the Superintendent, action by the Superintendent on the recommendation, an opportunity for a personal appeal to the Superintendent in the case of decision of dismissal or suspension, and an appeal to the Assistant Secretary of Commerce for Maritime Affairs. In plaintiff's case the Executive Board, finding no sufficient explanation or defense for the marijuana found in areas under plaintiff's control, determined that he was in violation of the Regu-

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3.

lation and recommended that he be disenrolled in accordance with Regulation Article 02105(2). The Superintendent reviewed and concurred in the recommendation of the Board, finding it both fair and in accord with the great weight of credible evidence. Plaintiff availed himself of the provision for personally requesting reconsideration by the Superintendent of the disciplinary action he had taken on the Board's recommendation (Regulations Article 03103(7)), and, on May 13, 1976, the Superintendent denied the appeal saying,

"In reaching my decision, I have weighed the evidence contained in the Executive Board report on your case and your personal statements to me asserting your innocence. Nothing in your statements have affected the great weight of credible evidence which prompted the Executive Board recommendation of disenrollment."

Plaintiff appealed to the Assistant Secretary of Commerce (Regulations Article 03103(8)). The Superintendent's decision was confirmed and adopted by the Acting Assistant Secretary in an opinion and order served on plaintiff by mail on June 3, 1976.

Plaintiff filed the present action on June 8, 1976,

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challenging the validity of his disenrollment on the grounds that it was based (1) on physical evidence discovered through a warrantless search made without probable cause which represented an invasion of plaintiff's constitutional rights, and (2) on the unsworn hearsay statements of a police officer who was not produced as a witness whom plaintiff could confront and cross-examine. It was alleged also that a midshipman whose testimony might well have been material had declined to testify in the proceeding on the advice of counsel. It appears to be agreed that the midshipman "steadfastly refused to testify at [plaintiff's] Executive Board and [the police officer] was not released by his command to appear before the Board."

The marihuana found in plaintiff's room was discovered during a search of the room on the night of February 20, 1976. The search grew out of/arrest in Kings Point Park the earlier in the evening of Midshipmen Byrne and Franklin for possessing marihuana. (See Memorandum in Byrne v. Secretary, E.D.N.Y., 76 C 841, May 17, 1976). The story of the arrest and what followed is set forth in Patrolman Vernaskes's handwritten report. The report recites that at a few minutes after 6:00 P.M. on February 20, 1976, the

5.

patrolman approached an automobile parked unlawfully on a roadway of the Park after nightfall. Three midshipmen, Boyce, Byrne and Franklin were seated in the car drinking beer. The patrolman observed a plastic bag on the floor of the car containing what looked like marihuana. The patrolman ordered the three youths out of the car, read them their rights, and summoned assistance. A search of the vehicle (owned by Boyce's mother) was negative, but a frisk of Franklin disclosed a bag of marihuana hidden in his right sock. The three midshipmen were removed to police headquarters. Byrne and Franklin admitted that the marihuana was theirs and exonerated Boyce of complicity. Questioning by the patrolman and his superior, Lieutenant Winkelmeier, elicited from Franklin the statement that he had bought his marihuana while on home leave, and from Byrne the statement that the bag of marihuana dropped on the floor of the car was his, and that he had bought it at the Academy from a 1st Class cadet, Ekelund. Lieutenant Winkelmeier's typed report of the interview adds that Byrne said under further questioning that "he bought his bag of marijuana today for \$20. from another cadet, 1st. classman, Kenneth Ekelund."

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6.

Patrolman Vernaskas then proceeded to the Academy. He was put in telephone contact with Lieutenant Timdhy Ford's house on the Academy grounds and stated to Lieutenant Ford that he had reliable information or information from a confidential informant that Ekelund was selling marihuana at the Academy and had a cache of it in his room. The patrolman did not say that Byrne was his informant and he was not asked for the informant's name or the basis for the assertion that he was a reliable informant. Patrolman and Vernaskas had no search warrant/he was not asked whether he had one, whether he had not had ample time to obtain one, nor why he had not obtained one. Lieutenant Ford explained that the Academy had the right to inspect the midshipmen's rooms, and, acting after telephone contacts with, and authorization from, the Commandant of Midshipmen, and after ascertaining, and advising the Commandant, that Patrolman Vernaskas meant to arrest Ekelund if marihuana was found in his room (a point Vernaskas cleared by telephone with his superior), Lieutenant Ford went with the patrolman to Ekelund's room. Ekelund was not in his room and the door was locked.

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7.

It was apparent that there were midshipmen in the room directly across the corridor. Lieutenant Ford found it locked, however, and it was opened only after a substantial delay; there were six midshipmen in the room - Ekelund was not one of them - and there was a strong smell of what seemed to be marihuana and beer. A search of the room unearthed no marihuana but some beer. However, when Lieutenant Kenneth Lyons, at Lieutenant Ford's request, searched the ground below the window of the room, he found a clear plastic bag of what appeared to be marihuana that could have been, but was not known to have been, thrown out of the window where the six midshipmen were. Patrolman Vernaskas was aware of what was occurring in the room across from Ekelund's and was shown the bag of marihuana, but he made no arrest, and Lieutenant Ford did not proffer him the opportunity to make a police investigation of the incident, to take possession of the bag of marihuana, or to arrest any of the six midshipmen. The six were, however, charged with Class 1 and lesser violations and, after an Executive Board hearing, the charges against them were, in effect, dismissed.

Meanwhile, Lieutenant Ford unlocked Ekelund's door and started Patrolman Vernaskas on a search of the room,

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indicating where he was to start the search. Much of Lieutenant Ford's attention and time was taken up with the incident across the corridor, and he and Lieutenant Lyons were not in Ekelund's room during every moment of the search, but Lieutenant Ford was responsible for the identification to Patrolman Vernaskas of the places to be searched and was in earshot of Patrolman Vernaskas when not in Ekelund's room with him. During some or all of the period of search one of the midshipmen was present as an observer and may have lent some mechanical assistance. Some if not all of the marihuana located in Ekelund's possessions in the room was discovered while Lieutenant Ford was in Ekelund's room with Patrolman Vernaskas and was guiding and, to an extent, participating in the search. After the discovery of some or all of the marihuana, Ekelund was sent for. He appeared, was given his rights and arrested. No reason for not summoning him before commencing the search appears. He was on the Academy grounds at all the times in question.

At the Executive Board hearing the use in evidence of the marihuana and testimony about its discovery were objected to on constitutional grounds as was the failure

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to produce Patrolman Vernaskas and Midshipman Byrne as witnesses so that they could be confronted and cross-examined.

There was also timely objection to the use in evidence of Patrolman Vernaskas's and Lieutenant Winkelmeier's written reports of the Byrne - Franklin interviews and Patrolman Vernaskas's report of the search episode. Lieutenants Ford and Lyons appeared as witnesses and were cross-examined, and Ekelund, and Ekelund's room-mate Truett testified. Byrne, acting on advice of counsel, declined to testify. Patrolman Vernaskas was not made available by the Kings Point Police Department, apparently in accordance with departmental policy, and the Executive Board had no power to compel him to appear. Ekelund appeared by counsel from outside the Academy, and an officer of the Academy had been assigned to represent him.

The use in evidence of the product of the search of Ekelund's room was not an invasion of his constitutional rights. The search was in substance a search by the state authorities and they had ample evidence to support the search. In retrospect there might have been time to apply for a warrant before going to the Academy. But the police decision to go at once to the Academy and seek its cooperation was prudent, and, as Patrolman Vernaskas suggested in his

search:

search by
state
authorities

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(testimony, was the practical course in the face of the fact that the place to be searched was a room in a federal educational institution. A magistrate, foreseeably, would hesitate or delay or might even refuse to issue a warrant. The stock of marihuana that a midshipman could have in his room could be expected to be modest and fast-moving. And the fact of the arrest of Byrne and Franklin could be expected to reach the Academy quickly and alarm the midshipman Byrne named as his supplier. The search was based on probable cause and the exigent circumstances and federal status of the place to be searched excused the police from seeking a warrant. The search, therefore, was not an unreasonable search and the seizure of the marihuana did not invade plaintiff Ekelund's constitutional rights. Cf. Coolidge v. New Hampshire, 1971, 403 U.S. 443, 454-455, 474-475, 486-490; United States v. Santana, 1976, U.S. (Slip Opinion, June 24, 1976, p.5, and concurring opinion of Mr. Justice Stevens, Mr. Justice Stewart concurring.)

(The search was a search by a state law enforcement officer who took the marihuana into his possession for use in a criminal prosecution, which, indeed, was promptly

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initiated. The role of the Academy and its officials was not to search and seize, or even to authorize the state law enforcement officer's search and seizure. The Kings Point police were authorized to search by the probable cause they had. What the Academy did was to permit the search, to interpose no obstacle to it, and to assist in it. The place to be searched was in a federal institution. Plaintiff Ekelund was one of two occupants of the room, and Patrolman Vernaskas's information accused only Ekelund and not his room-mate. The room was subject to very frequent inspection "by authorized personnel" (daily, weekly and formal inspections are prescribed in Article 08203), and, in addition Article 08201(2) provides (under the catch-line "Condition of Rooms") that

"Midshipman rooms may be inspected at any time by authorized personnel for purposes of observation of room conditions and to check for violations of USMM Midshipmen Regulations."

Possession of marihuana is a Class I offense (as noted above) and possession of alcoholic beverages is a Class II offense (Article 02102, 03107-204). Moreover, the Commandant's Instruction 02105.2A of August 1, 1974, on the subject of Drug Abuse advised the midshipmen:

"6. THE ACADEMY AND PUBLIC LAW: Midshipmen who violate Federal or State Laws relative to drug abuse are subject to the penalties prescribed by law. The Academy is subject to concurrent Federal, State and local jurisdiction and it shall in no way provide protection from the law."

To the extent, then, that what has been denominated "the expectation of privacy" is a significant factor in resolving search and seizure questions, the midshipmen of the Academy could have little if any such expectation. Article 08201 can be interpreted as authorizing some such midshipman's expectation only as to the/"PERSONAL DRAWER" (Article 08201(5)), and even that drawer

"... may be opened in the presence of the Midshipman for inspection relative to any violations of Midshipman Regulations, but shall not be opened in his absence."

The Regulations make it clear that so far as the Academy can be considered a participant in the police search, it acted with ample authorization in the regulations and in a situation in which a midshipman could entertain no expectation of privacy. Cf. Committee for Constitutional Rights v. Callaway, D.C.Cir. 1975, 518 F.2d 466, 477; Biehunik v. Felicetta, 2d Cir. 1971, 441 F.2d 228, 230-231 (and cases cited therein).

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Finally, the use of the evidence discovered in the search in the disciplinary proceeding must be considered in light of the fact that it is a civil proceeding. The consequences of the proceeding are grave, but it is not a criminal proceeding, and in no true sense is the proceeding punitive or vindictive, nor is it a forfeiture proceeding. Rather it is a determination of unfitness for training for command rank in the merchant marine. In such a case the use in evidence of that which might be excluded in a criminal case does not involve an invasion of a constitutionally protected interest. The searching re-examination of the question in United States v. Janis, 1976, 44 L.W. 5303, emphasizes how dubious is the principle of exclusion even as applied in criminal cases and the further damage to the search for truth that must flow from uselessly extending it to civil cases. (Note the second sentence of footnote 31).

There was no departure from the due process standards appropriate to the proceeding in the conduct of the Executive Board hearing. The tribunal could not compel the appearance of Byrne or Vernaskas as witnesses and use of the police reports, obviously hearsay to the tribunal,

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was not impermissible. That they were hearsay was evident to the hearing officers. But so far as plaintiff Ekelund was concerned, the critical issue was whether or not he was consciously in possession of marihuana in his quarters. On that issue Lieutenant Ford was an eyewitness called to be cross-examined and contradicted by plaintiff, and plaintiff was able to and did call his room-mate as a witness.

Lieutenant Lyons was present at part of the search and was also called as a witness and cross-examined. It is evident that the hearing officers were confronted with an issue of credibility, and that they did not believe plaintiff Ekelund.

It follows from what has been said that plaintiff is not entitled to the preliminary relief he seeks. It is,

ORDERED that plaintiff's motion for a preliminary injunction restraining defendants from dismissing, suspending or excluding him from the United States Merchant Marine Academy is denied.

Brooklyn, New York

July 20, 1976.

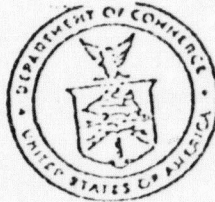
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U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK 11024

March 8, 1976

Assistant Commandant of Midshipmen

Formal Charges: Class I Violation

To: Midshipman Kenneth O. Ekelund 76-1

Ref: (a) Form KP1-8, dated 2/22/76, Charge: Violation of Article 02105.2; Dangerous Drugs and Lesser Offenses.

(b) U.S.M.M.A. Regulations Book (1974)

(1) Article 02105.2

(2) Article 03107, Number 105

(3) Article 02105.2A a); 5(c)

You are charged with violating USMMA Regulations Book (1974) as referenced above in that a quantity of marihuana was found in your room and personal effects. This is in violation of Federal Law regarding controlled substances.

Specifications of these charges are as follows:

"Inspection of Midshipman Ekelund's room and personal effects resulted in discovery of a quantity of marihuana packaged in plastic bags. Midshipman was arrested by Kings Point Police and was arraigned in Nassau County Criminal Court for violation of section 220.09 New York State Penal Law "Possession of controlled substance in fifth degree" (Class C Felony).

In accordance with Article 03103 of Reference (b), you are hereby informed that this violation has been classified as a Class I Offense as defined in Reference (b). You are directed to sign this letter of formal charges in the appropriate space below indicating: (1) You accept the charge and specifications as written to be correct; or (2) You wish to submit an amplifying statement. Receipt of these formal charges and/or amplifying statement is to be returned to the Assistant Commandant of Midshipmen WITHIN TWENTY FOUR HOURS. In the event that additional time will be required for preparation of a statement, you should contact the Office of the Superintendent promptly.

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Formal Charges; Class I Violation

a will be required to appear before an Executive Board at time and date to be determined by the Superintendent. You will receive notification from the Office of the Superintendent.

If for any reason you cannot appear at the specified time, you are directed to notify the Commandant's Office immediately. Any questions relative to these proceedings should be directed to your Company Officer.

J. N. Hill

J. N. Hill
Commander, USMS

Assistant Commandant of Midshipmen

ENDORSEMENT

DATE March 9 1976

From: Midshipman Kenneth O. Ekelund, 76-1
To: Assistant Commandant of Midshipmen

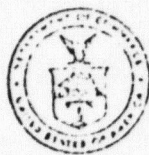
Subject: Formal Charges; Class I Violation, Charge: Violation of Article 02105.2, Dangerous Drugs and Lesser Offenses.

CHECK ONE ☒ NO STATEMENT
☐ AMPLIFYING STATEMENT TO BE SUBMITTED

Not Guilty

Kenneth O. Ekelund
Midshipman's Signature

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UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
United States Merchant Marine Academy
Kings Point, New York 11024

April 8, 1976

MEMORANDUM FOR: Superintendent

Subject: Violation of Article 02105.2; Dangerous Drugs
and Lesser Offenses

Ref: (A) SUPINST 74-26; "Executive Board"
(B) Article 01402, USMMA Midshipmen Regulations
1974 Executive Board

Encl. Findings of the Board

In accordance with the directions in your memorandum of March 8, 1976, the Executive Board was convened on March 26, 1976 at 0900 and again on April 5, 1976 in the Board Room of Wiley Hall to hear the case of Midshipman Kenneth O. Ekelund, 76-1. The following officers were present:

Captain Victor E. Tyson, Jr., USMS, Chairman
Captain Paul L. Krinsky, USMS
Captain Lawrence Jarrett, USMS
Captain George H. Davis, USN
Captain John M. Dittrick, USMS
Lieutenant William McCaffrey, USMS, Recorder
(March 26 session only)
Lieutenant Frederick R. Warren, USMS, Secretary-
Recorder (April 5 session only)

Also present were Robert Nishman, Esq., and Lt. Jeffrey Puck, USMS representing Midshipman Ekelund.

Commander John N. Hill, USMS, presented the case as Assistant Commandant of Midshipmen and then departed.

During the course of the investigation, the following witnesses were called:

Lieutenant Timothy D. Ford, USMS
Lieutenant Kenneth J. Lyons, USMS
Midshipman Edsel Truett 76-1

At the opening, Captain Victor E. Tyson, Jr., Chairman of the Board, explained the purpose of the Board to Midshipman Ekelund and his counsel, Mr. Nishman. The administrative powers and authority of the Board were outlined, and the appeal procedures explained. Furthermore, it was understood by Midshipman Ekelund and his counsel that the Board was making a recommendation to the Superintendent, based upon the evidence presented to the Board, and the Academy regulations as outlined in the USMMA Midshipmen Regulations Book.

Mr. Nishman requested that the witnesses be allowed to appear before the Board for questioning. The Board advised Mr. Nishman that the Academy could not compel outside witnesses to testify because the Board had no subpoena powers, but that those officers and Midshipmen affiliated with the Academy would be available for questioning.

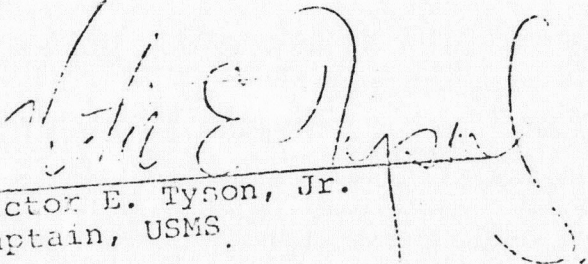
Midshipman Byrne was invited to testify on two occasions but declined to do so on the advice of his counsel, Mr. Stern.

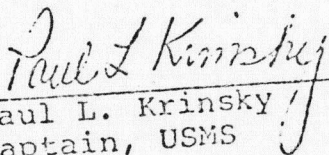
The Board heard Commander John Hill's presentation of the events on the evening of February 20, 1976 and then heard testimony from the above named witnesses and accused Midshipman. Questions were asked by the Board and by the Midshipman's counsel of Commander Hill. Midshipman's counsel was permitted the right to cross-examine all witnesses freely. After the entire testimony was heard in the recorded sessions, the Board went into Executive Session to review the testimony and facts presented before the Board as well as the attached enclosures.

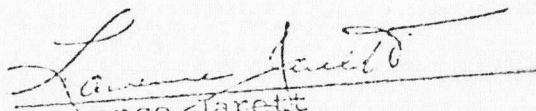
The Board reviewed the circumstances of the events that led to the search of Midshipman Kenneth Ekelund's room in Palmer Hall and the results thereof. The Kings Point Police Department made available to the Board the two official statements by (1) Patrolman Albert Vernaskas and (2) Lieutenant Winkelmeyer. These statements were made on two separate occasions during which Midshipman Byrne identified Midshipman Ekelund as the seller of the marijuana packets found by Patrolman Vernaskas in the possession of Midshipman Byrne. As a result of the room search, supervised and conducted by Lt. Ford, a quantity of vegetable matter was found in Midshipman Ekelund's bunk post, bunk linen, desk, civilian gear locker, and the wardrobe locker (shared by him with his roommate, Midshipman Truett). This vegetable matter was tested by the Nassau County Police Scientific Investigation Bureau, and discovered to be marijuana. The Bureau's statement to this effect is attached hereto.

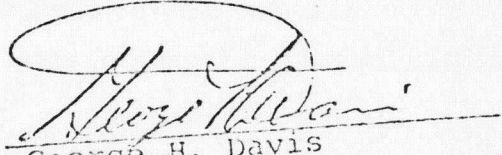
A-20


Based on the evidence presented before the Board and testimony, both written and oral, the Board found no sufficient explanation or defense for the marijuana found in areas under Midshipman Ekelund's control. The Board found Midshipman Kenneth O. Ekelund in violation of Article 03107-#105, a Class I offense titled "Dangerous Drugs, possession, sale or use of", and the Board recommended by a 5-0-0 vote that Midshipman Ekelund be DISENROLLED in accordance with Article 02105.2 of the USMMA Midshipmen Regulations.

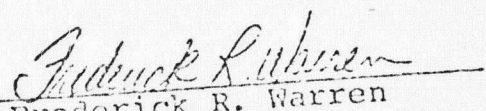

Victor E. Tyson, Jr.
Captain, USMS

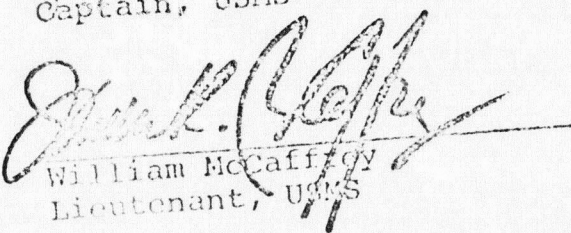

Paul L. Krinsky
Captain, USMS


Lawrence Jarett
Captain, USMS


George H. Davis
Captain, USN


John M. Dietrick
Captain, USMS


Frederick R. Warren
Lieutenant, USMS


William McCaffrey
Lieutenant, USMS

ENCLOSURES:

1. Investigative Report of Midshipman Ekelund, Daley, Boston, Eusepi, Byrne, Franklin, Donnelly, Graney, Pacelko
APPENDIX "C" (to above report)
2. Report of Facts; incident of February 20, 1976 with enclosures
3. KP1-8 Report of Deficiency (Midshipman Ekelund) 76-1
4. MCDO log of Friday, 20 February 1976
5. Police General Report #56 - Friday, 20 February 1976 and General Report Supplement
6. Police Department, County of Nassau, New York Arrest KPPD #4-76
7. Statement of Chief Hartz re: Patrolman A. Vernaskas, Shield #209
8. Nassau County Police Scientific Investigation Bureau, Report DD No. 6-457-1976
9. Copy McKinney's Consolidated Laws of New York, Section 220.00 Book 39 (Annotated)
10. Profiles of Midshipmen Ekelund by Company Officers
11. Formal charges; Class I Violation, March 8, 1976

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APPENDIX "C" C

SUBJ: Investigative Report of Midshipman Ekelund, Daley, Boston, Eusepi, Byrne, Franklin, Donnelly, Craney, Pacelko

REPORT OF FACTS: (Midshipman Ekelund)

1. On or about 1900 hours, Friday, February 20, 1976, Lt. T. D. Ford, USHS was informed by a Police Officer from the Village of Kings Point that, on the information of an informant, the Police had probable cause to suspect that a Midshipman had a quantity of marihuana in his room. Lt. Ford informed the Commandant of Midshipmen and was authorized to conduct a search of the Midshipman's room, upon the arrival of Patrolman Albert Vernaskas, shield #209. Patrolman Vernaskas reported that a confidential informant had purchased a bag of marihuana from a Midshipman Ekelund and the Kings Point Police Department was requesting the Academy's cooperation and authority to conduct a search of Midshipman Ekelund's room, #1421, Palmer Hall, and his person. Upon searching the unlocked areas of the room, the following were found:

- (1) Eight (8) bottles of beer.
- (2) One film cannister containing marihuana in a pocket of a blazer jacket in the wardrobe closet. In the drawer of the wardrobe one large plastic bag containing four (4) small packets and two (2) larger bags of marihuana were found. In the upper bunk one brass pipe was found with two (2) film cannisters of marihuana under a blanket. One film cannister of marihuana was found under the pillow. All items were found in the possessions stenciled EKELUND K.E. #7676.

All items believed to contain marihuana were confiscated by Patrolman Vernaskas for analysis and confirmation that the containers did in fact contain marihuana is verified in enclosure (3) case #DD6-457-1976.

Lt. Ford and Lt. Lyons were witnesses to the search with the Midshipmen Gulley and Peterlin observing.

Lt. Ford during a personal interview confirmed the findings of the search and Lt. Lyons was present only during the discovery of the large plastic bag in the wardrobe drawer and the items in the linen.

A-22

At 2010, Midshipman Ekelund returned to his room and was placed under arrest and his rights were read to him. He was taken at 2030 to the Kings Point Police Station for processing by Patrolman Vernaskas accompanied by Lt. Ford. He was arraigned on a Class "C" felony. His admission to ownership of items found was recorded in the official police report.

CONCLUSIONS: (Midshipman Ekelund)

a. I interviewed Midshipman Ekelund on February 24, 1976 and he had no statement to make at this time.

b. (1). The uncovering of quantities of a substance believed to be marihuana in his room and the statement of an informant concerning Midshipman Ekelund's involvement indicate cause to charge him with violation of Article 02105 (2), "Dangerous Drugs", Possession of, (amplified by reference (d)).

(2) He is also charged with violation of Midshipman Regulations Article 02102 (2), "Possession of Alcoholic Beverages."

c. Enclosure (3) identifies the substances found in Midshipman Ekelund's room as marihuana, a controlled substance described in reference (c) which subject Midshipman admitted was his property in enclosure (2). Report No. 567, page 3 of Supplement I located in Lt. T. D. Ford's Report of Facts, enclosure (1)(1).

RECOMMENDATIONS: (Midshipman Ekelund)

a. Due to the nature of the charge, it is recommended that a Classification I be assigned to the offense.

b. Since Midshipman Ekelund was formally charged by local authorities with possession of a controlled substance reference (d) paragraph 5a(3) refers to the case and should be reviewed.

c. That Midshipman Ekelund be sent to the Executive Board for its review of this case and his tenure at the United States Merchant Marine Academy.

A-23

February 23, 1976

-2-

Subj: Report of Facts; incident of February 20, 1976

2. REPORT OF FACTS (Continued):

d. Lt. Ford related this information to the Commandant. Several minutes later, the Commandant called Lt. Ford and directed that a search of Midshipman Ekelund's room and person was authorized to be performed by Lt. Ford in conjunction with Patrolman Vernaskas. Lt. Lyons, the Command Duty Officer, and Midshipman Peterlin, BX-1, were contacted and directed to meet Lt. Ford on the top deck of First Company. At approximately 1935 hours, Lt. Ford and Patrolman Vernaskas proceeded to Room 1421, Palmer Hall, the room assigned to Midshipman Ekelund. Finding the room unoccupied, Lt. Ford knocked upon the door to room 1422, immediately across the hall from room 1421 for the purpose of determining whether Midshipman Ekelund was in that room. Room 1422 was obviously occupied since the light was on and noise emanated from the room.

e. Lt. Ford knocked on the door to room 1422 and found it locked when he attempted to enter. He identified himself and ordered the occupants to open the door immediately. For a period of approximately 30 seconds, scuffling noises emanated from the room. Despite three attempts to force the door by Lt. Ford and repeated orders to open the door, the occupants did not open the door until nearly 45 seconds had elapsed.

f. When the door was finally opened, Lt. Ford entered the room and immediately smelled a strong acrid odor characteristic of marijuana. This was confirmed by Patrolman Vernaskas.

g. At this time, Lt. Lyons and Midshipman Peterlin, BX-1, reported to the scene. A brief search of the room revealed a quantity of beer distributed throughout the room. Lt. Lyons, accompanied by Midshipman Gulley, CX-2, was directed to perform a search of the ground in the area below the window of room 1422. Lt. Lyons returned at 1945 hours and reported that he had found a clear plastic bag containing a substance that appeared to be marijuana.

h. The occupants of room 1422 were:

Midn. Eusepi,	76-1	Midn. Graney,	79-2
Midn. Boston,	76-5	Midn. Pacelko,	79-1
Midn. Daley,	76-4	Midn. Donnelly,	79-1

4-25

February 23, 1976

-3-

Subj: Report of Facts; incident of February 20, 1976

2. REPORT OF FACTS (Continued):

i. A brief period of questioning of the Midshipmen was carried out by Lt. Ford. They were informed of the serious nature of their infractions of the Regulations. All six (6) Midshipmen indicated that they wished to make no statement at that time or denied any involvement with marijuana.

j. Concurrent with the questioning of the occupants of room 1422, a search of Midshipman Ekelund's room (#1421) was commenced by Ptl. Vernaskas with Lt. Ford and Lt. Lyons present and supervising the conduct of the search.

k. All unlocked areas within the room were searched with the following results:

(1) Eight (8) bottles of beer.

(2) A quantity of a substance which appeared to be marijuana stowed in Midshipman Ekelund's desk, wardrobe civilian gear drawer and within Midshipman Ekelund's bunk linens. Midshipman Ekelund's personal drawer was searched by Lt. Ford with negative results.

l. At approximately 2010 hours, Midshipman Ekelund arrived at his room. Midshipman Ekelund was immediately placed under arrest by Patrolman Vernaskas, his rights were read to him in the presence of Lt. Ford and Lt. Lyons.

m. Further search of room 1421 revealed no further dangerous drugs.

n. At 2030 hours, Midshipman Ekelund, accompanied by Lt. Ford, was taken to the Kings Point police station for processing by Patrolman Vernaskas.

o. While at the police station, Lt. Ford filed a supporting deposition relating to the events of the evening.

p. While present in the police station, Lt. Ford learned that two other Midshipmen had been arrested earlier that evening. They were identified as:

Midshipman Joseph Byrne
Midshipman Christopher Franklin

A full report of the circumstances of their arrest is contained in enclosure (2) of this report.

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February 23, 1976

-4-

Subj: Report of Facts; incident of February 20, 1976

2. REPORT OF FACTS (Continued):

g. At approximately 2115 hours, Lt. Ford made a brief verbal report of the events to the Commandant of Midshipmen via telephone.

r. On Saturday, February 21, 1976, Lt. Ford accompanied by two Midshipman Officers, was present at Nassau County District Court for the arraignment of the three arrested Midshipmen. Civilian attire was given to the Midshipmen for their court appearance and it was determined that all had obtained legal counsel and their parents had been informed.

s. The Midshipmen were arraigned on the following charges:

Midn. Ekelund: Violation of New York State Penal Law, section 220.09
"Criminal Possession of a Controlled Substance in the 5th Degree".

Midn. Byrne: Violation of New York State Penal Law, section 220.06
"Criminal Possession of a Controlled Substance in the 6th Degree".

Midn. Franklin: Violation of New York State Penal Law, section 220.06
"Criminal Possession of a Controlled Substance in the 6th Degree".

t. The Midshipmen were released on their own recognizance after the Court was informed of their status as Midshipmen at the United States Merchant Marine Academy.

u. Judge Lawrence, the Presiding Justice of the Court, made inquiries of Lt. Ford regarding the present and future status of Midshipman Ekelund. Judge Lawrence then directed Lt. Ford to inform the Court prior to any dismissal or resignation of Midshipman Ekelund.

v. After arraignment, Lt. Ford separately directed the three Midshipmen to return to the U.S. Merchant Marine Academy at the conclusion of any consultation with their parents or attorneys. They were further informed that their liberty privileges were suspended until the resolution of their situation.

A-27

February 23, 1976

-5-

Subj: Report of Facts; incident of February 20, 1976

2. REPORT OF FACTS (Continued):

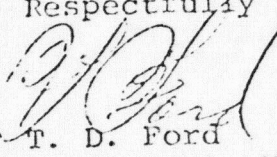
w. On Sunday, February 22, 1976, Lt. Ford obtained a copy of the Kings Point Police Department General Report Number 56, relating to the arrest of the Midshipmen.

3. CONCLUSION AND RECOMMENDATIONS:

a. Based upon personal observations and the police report, it is this author's belief that sufficient probable cause exists to warrant charging the aforementioned Midshipmen with Class I offenses and various lesser included offenses.

b. Accordingly, this officer has prepared such charges. Copies of the Forms KPl-8 are attached as enclosure (3).

Respectfully submitted,


T. D. Ford
Lieutenant, USMS

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A-29

Form KP 1-8

UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK

REPORT OF DEFICIENCY (MIDSHIPMAN)

MIDSHIPMAN:	LAST NAME	FIRST	INITIAL	SECTION	DATE OF REPORT
	Ekelund	Kenneth	O.	76-1	2/22/76
DATE OF OFFENSE:	TIME:	LOCATION			
2/20/76	1940	Room 1421 - Palmer Hall			
CHARGE:					
Violation of Art. 02105.2 - Dangerous Drugs					
SPECIFICATIONS: (GIVE COMPLETE DESCRIPTION OF EVENTS RELATING TO CHARGE)					
<p>Inspection of Midshipman Ekelund's room and personal effects resulted in discovery of a quantity of marijuana packaged in plastic bags. Midshipman was arrested by Kings Point Police and was arraigned in Nassau County Criminal Court for violation of section 220.09 New York State Penal Law "Possession of controlled substance in fifth degree". (Class C Felony).</p>					
Ref: CO-1 memo dtd 2/23/76 to Com; subj: Report of facts, Incident of 2/20/76					
RECOMMENDED ACTION	SIGNATURE OF REPORTING OFFICER				
	<p><i>Class I</i></p> <p><i>[Signature]</i></p>				
ACTION	SIGNATURE OF COMMANDER				
	<p><i>[Signature]</i></p>				

FRIDAY

2000

20 FEB 1976 ¹³⁹

CO1 AND CO2 PRESENT DURING QUESTIONING
OF SIX MIDN. IN ROOM 1422

MIDN ON REG STAFF REQUESTED TO
LOCATE M/EKELUND AND HAVE HIM REPORT
TO HIS ROOM. GATE REQUESTED TO HAVE
M/EKELUND RETURN TO ROOM IF HE COMES
TO GATE.

M/EKELUND REPORTS TO ROOM

M/EKELUND ARRESTED. RIGHTS READ TO
HIM IN THE PRESENCE OF CO1, CO2, BX1 AND
CX2. FURTHER SEARCH OF ROOM REVEALED
NO FURTHER DANGEROUS DRUGS. ROOM
SECURED. MIDN ^{TO BE} TAKEN OFF STATION BY
POLICE FOR PROCESSING AT KINGS POINT

POLICE STATION AND MINEOLA COUNTY JAIL.

MIDN EKELUND ^{TO BE} ACCOMPANIED TO POLICE STATION
BY LT. FORD. FULL VERBAL REPORT MADE
TO COMMANDANT BY LT. FORD.

POLICE, LT. FORD AND M/EKELUND DEPART
ACADEMY GROUNDS.

#281001 belonging to M/Trust, which was recovered during
search of M/Ekelund's room, turned over to MCDP for safe
keeping until M/Trust's return. M/Trust - MCDP
office to have M/Trust call MCDP upon returning
prior to him returning to his room.

EW

FRIDAY

20 FEB 1976

CO2 AND BX1 ARRIVE ON TOP DECK FIRST
COMPANY. CO1 IN ROOM 1422. THE FOLLOWING
MIDN WERE PRESENT IN ROOM:

DALEY	76-4
BOSTON	76-5
EUSEPI	76-1
DONNELLY	79-1
PACELKO	79-1
GRANEY	79-2

CO2 AND BX1 WERE REQUESTED TO SEARCH
BELOW WINDOWS OF ROOM 1422. CX2 IS ASKED
TO ASSIST IN SEARCH.

45 CO2 AND CX2 FIND A BAGGIE CONTAINING
MARIJUANA ON THE GROUND DIRECTLY BELOW THE
WINDOWS ON ROOM 1422. DURING THIS PERIOD
OFFICER. VERNAKAS CARRIES ON SEARCH OF ROOM
1421. SEARCH CARRIED ON AS RESULT OF
POLICE. INFORMANT COMPLAINT.

THE RESULT OF THE SEARCH:

8 BOTTLES OF BEER

A QUANTITY OF MARIJUANA FOUND
IN VARIOUS AREAS OF ROOM

- a) M/ EKEKUND'S DESK
- b) M/ EKEKUND'S CIVILIAN GEAR

DRAWER IN WARDROBE LOCKER

- c) M/ EKEKUND'S BUNK

DEPARTMENT
KINGS POINT, L.I., N.Y.

GENERAL REPORT

DAY OF WEEK Friday.
DATE RECEIVED 2/20/76
TIME RECEIVED 6:07 PM

TEL. ENTRY NO.

BLOTTER PAGE NO.

ARREST COX
#2, #3, #4.

SURNAME
Vernaskas

OTHER INDEX NO.

FIRST NAME
Ptl. Albert

INITIALS

PHONE NO.

Kings Point Police Department.

CLASSIFICATION

Narcotic Arrests. (3)

DATE OF OCCURRENCE
and time of report.

REPORTING OFFICER
Det Winkelmeyer

RANK
Lt.

SHIELD NO.

OFFICER ASSIGNED
Albert Vernaskas

RANK
Ptl.

SHIELD NO.
209

SIGNATURE OF DETECTIVE

7 PM Ptl. Vernaskas reports via KEB he needs assistance, Stearboat Road side of Kings Point Park.

7 PM Ptl. Magee assigned via KEB to assist.

8 PM Ptls. Vernaskas and Magee present at Hdqts. with the following:

- 1) Joseph Byrne, dob 12/17/56, 1st. Co., Room 1403-USMMA, home address 2 Rochford Dr., West Nyack, N.Y.
- 2) Christopher Franklin, dob 6/19/56, Room 6413, USMMA, home address 472 Hasbrouck Blvd., Oradell, N. J.
- 3) William H. Boyce, dob 6/1/56, second year cadet at USMMA, currently assigned to sea duty semester, home address 20 Schoolhouse Road, Levittown, N.Y.

DATE	TIME	AUTH. OR BUREAU NOTIFIED	RECEIVED BY	DISPATCHED
2/20/76	9:30 PM	1TH. Ld.	Det Winkelmeyer	Lt. Winkelmeyer

NOTATION

A-32

INVENT
NY, L. I. N. Y.

GENERAL REPORT
SUPPLEMENT

REPORT No. 56
SUPPLEMENT No. orig.

2/20/76

DATE OF ORIGINAL REPORT 2/20/76

CLASSIFICATION Narcotic Arrests

Ptl. Vernaskas states the three were found in a 66 Chevrolet Chevelle sedan, black, Reg: 934D2W NY, owned by Irene Boyce, and operated by her son, William, same address.

Ptl. Vernaskas states that he found a clear plastic bag of what appears to be marijuana on the floor of the car, arrested the three, read them their rights and searched them. A clear plastic bag of marijuana was found on Christopher Franklin.

At Hdqts. after each was interviewed separately by writer and Ptl. Vernaskas, Joseph Byrne admitted ownership of the plastic bag found in the car. Under further questioning, Joseph Byrne stated that he bought his bag of marijuana today for \$20. from another cadet, 1st. classman, Kenneth Ekelund.

CEM Ptl. Vernaskas leaves Hdqts. for further investigation at USMA.

CEM Ptl. Vernaskas present with Kenneth Ekelund, dob 2/4/54, home address 4224 Sherwood Rd., Jacksonville, Florida, and Lt.

Timothy Ford, duty officer, MMA. Ptl. Vernaskas states Lt. Ford cleared with the Commandant, authority to search the room of cadet Ekelund, and a quantity of marijuana was found in lockers, etc., which were in Ekelund's possession for use at the MMA.

POFM William H. Boyce released from investigative custody.

OPM Ptls. Vernaskas and Magee leave in Car #204, enroute 6th. Sqd. with prisoners, Byrne, Franklin, and Ekelund.

STATEMENT
NY, L. I. N. Y.

GENERAL REPORT
SUPPLEMENT

REPORT No. 56
SUPPLEMENT No. 1

21-76

DATE OF ORIGINAL REPORT 2-20-76

CLASSIFICATION NARC. Agent

Writer while checking Kings Point Park.
Hutchinson Road side observed a suspicious
Black Vehicle parked with three male
occupants. Writer walked over to car
and observed all were drinking beer (quantity)
Writer observed a plastic bag dropped
to the rear floor by USMAC coded Byrne
said bag contained a greenish brown lumpy
substance believed to be marijuana. Writer
asked all occupants to get out of the car.
Rights were read.

Writer requested assistance from Headquarters
Pat Meyer of scene

Writer searched vehicle with neg results
Writer searched three suspects a plastic
bag containing a greenish brown lumpy
substance was found in the right seat of
USMAC coded Franklin:

Writer, Pat Meyer and 2 agents and
coded for investigation done in Headquarters
of Headquarters both Byrne and Franklin
stated that the marijuana was belonged
to them and that the driver of the
car coded Byrne was not involved

Writer of Lt. Windelmeyer questioned
all subjects with following results.

n

n

A-34

STUDENT
POINT, L. I., N. Y.GENERAL REPORT
SUPPLEMENT

REPORT No. 56

SUPPLEMENT No. 1

DATE 2-21-76

DATE OF ORIGINAL REPORT 7-20-76

CLASSIFICATION U.M.C. A-35

Cadet. Byrne. Driver of the car. Had no knowledge of any marijuana and stated he did not smoke it. Cadet Franchino. Stated the bag of marijuana found in his sock was his and that he bought it while he was home on leave. Cadet Byrne stated the bag was dropped in the car by him and that he had purchased the marijuana in the U.S.M.A.C. for a 1st class cadet. E. KELAND.

When then checked with Lt. Ford of the U.S.M.A.C. Special Assistant Superintendent. Who stated that they have it in their rules and regulations that they have the authority to inspect by cadets room at any time. Lt. Ford then checked with the command of the academy. After confirmation with command officer and Lt. Winkler. Lt. Ford then went to the room of Mr. E. Keland a locked room. Room 1421 3rd Floor. Palmer Hall U.S.M.A.C.

A-35

2-21-76

St. Ford opened door of room
in hand of Lt. K. Lyons USMAA,
mid shipman 1st class Peterlin USMAA,
mid shipman 1st class Galley USMAA.

The room was checked disclosing the
following in the wardrobe closet.
Blue Blazer jacket 1 Plastic film
case containing marijuana. Wardrobe
cabinet green drawers. Large Plastic Bag
containing 4 small packets of marijuana
and 2 large bags of marijuana. Upper
Bunk under blanket 1 Brass pipe 2 film
cassettes containing marijuana under pillow
1 film cassette containing marijuana. In
all areas where marijuana was found.
clothing and bedding were sterilized belonging

to EKEUND - KE-76

3:30 P.M.

Mr. Ekelund then came into
his room. He was placed under arrest
and read his rights. St. Ford then
asked Ekelund if he knew where
the marijuana was found was his.
He stated "yes" Ekelund then stated
he did not want to make any more
statements. With St. Ford and
C. D. L. & D. L. N. L. in the room.

DEPARTMENT
POINT, L. I., N. Y.

GENERAL REPORT
SUPPLEMENT

REPORT No. 56
SUPPLEMENT No. 1

CLASSIFICATION NAME AND

ORT 2-21-76

DATE OF ORIGINAL REPORT 2-20-76

William Boyle released from
investigative custody. Prisoner

Paul Meyer and Walter Prisoner
Byrne, Franklin and Ebeland leave
in car 204 for 6th Avenue.

2-21-76

1:15 AM

Carded Ebeland. Leave for main
desk minutes with NCPD. P.O. Richmond
Walter and NCPD. Po leave for

2:20 AM

minutes main desk with Byrne and
Franklyn. NCPD. Po. leave

2:30 AM

Walter and NCPD. Po. leave
minutes for NCPD 6th Pct.
Walter Present at K.P. PD. 1st Ave

2:25 AM

1. **PERSONAL DATA**
 NAME: COUPUS CRISTI SEX: M DATE OF BIRTH: 2/18/54 PLACE OF BIRTH: TEXAS
 HEIGHT: 180 WEIGHT: 140 HAIR: blond EYES: blue COMPLEXION: fair
 SCARS, MARKS, AMPUTATIONS, DEFORMITIES, ETC.: none

2. **IDENTIFICATION**
 SOCIAL SECURITY NO.: 219-61-4282 FINGERPRINTS: none

3. **EMPLOYMENT**
 PRESENT EMPLOYER: UNEMPLOYED ADDRESS: none
 PREVIOUS EMPLOYER: none ADDRESS: none
 MARITAL STATUS: single NAME AND ADDRESS OF SPOUSE: none
 WIFE'S MAIDEN NAME: none CHILDREN: none

4. **EDUCATION**
 HIGHEST GRADE COMPLETED: 12 SCHOOL GRADUATED OR LAST ATTENDED: none

5. **RESIDENCE**
 PRESENT ADDRESS: none

6. **TRAVEL**
 COUNTRY OF ORIGIN: USA

7. **RECORDS**
 PREVIOUS RECORD AS ACQUITTED BY COURT: none
 PREVIOUS RECORD AS CONVICTED BY COURT: none
 PREVIOUS RECORD AS DEPORTED: none

8. **ARREST**
 DATE OF ARREST: 2/20/76 LOCATION: ST. LOUIS SIXTH SQUAD
 OFFENSE: possession of controlled substance

9. **DETAILS**
 DATE/TIME OF RECORDING: 2/20/76 2325
 DATE/TIME OF OFFENSE: 2/20/76 LOCATION: ST. LOUIS SIXTH SQUAD
 BRIEF DETAILS OF ARREST OR REASON FOR INVESTIGATION IF NO ARREST: possession of controlled substance

10. **OFFICER**
 NAME: Officer Albert Vernaskas ADDRESS: 309, Kings Point Police Department
 DATE/TIME OF OFFENSE: 2/20/76 LOCATION: ST. LOUIS SIXTH SQUAD

11. **REMARKS**
possession of controlled substance

12. **REMARKS**
possession of controlled substance

13. **REMARKS**
possession of controlled substance

14. **REMARKS**
possession of controlled substance

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99. **REMARKS**
possession of controlled substance

100. **REMARKS**
possession of controlled substance

1. Date and Time Reported		3. Felony Misdemeanor Local Investigation		4. Other Number G.R. 56		5. Precinct (or) Village	
6. Place of Occurrence (Number - Street - Village - Post Number)				7. Incorporated Village yes		8. Inside Outside	
10. Type Premise - Business, Etc.		11. Trade - Business Name		12. Complainant (or) Victim's Surname, First Name, Initial FORD Timothy D.			
13. Complainant's Address (Number - Street - Village) Quers'E' U.S. M.M.A.				14. Age 28		15. Occupation MARITIME SERVICE	
18. Reported by (Surname - First Name - Initial) 7				19. Address (Number - Street - Village)		16. Home Telephone 487-0246	
21. Vehicle Used, Describe				20. Telephone Number 482			
23. Alarm Number				24. Date - Time - Transmitted		25. Uniform Member Assigned	
27. Number of Arrests Adult Juvenile				26. Detective Assigned			
29. Mode of Entry		30. Point of Entry		BURGLARY INFORMATION		33. Malicious damage: Yes/No Lig Human being present in premise:	
<input type="checkbox"/> Pry (door-window) <input type="checkbox"/> Broken glass (door-window) <input type="checkbox"/> Unlocked (door-window) <input type="checkbox"/> Cut screen (door-window) <input type="checkbox"/> Other (Key-pick-unknown)		<input type="checkbox"/> Front <input type="checkbox"/> Side <input type="checkbox"/> Rear <input type="checkbox"/> Roof <input type="checkbox"/> Cellar		31. Property Stolen <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured <input type="checkbox"/> No Loss		32. Safe <input type="checkbox"/> Rip <input type="checkbox"/> Torch <input type="checkbox"/> Carried away <input type="checkbox"/> Other	
35. ARTICLE		36. DESCRIPTION OF PROPERTY (LIST ADDITIONAL PROPERTY ON REVERSE SIDE)				37. VALUE	
39. Reporting Members Investigation (or) Remarks (if any)							

SUPPORTING DEPOSITION

CASE REPORT NO. _____

I am Timothy Ford and reside at Quers'E' USMMA
 and I am employed by U.S. MERCHANT MARINE ACADEMY
 That on the 20th day of FEBRUARY 1976 at about 7:35 PM I observed

Was informed by Patrolman Vernasca that Midn Echline was suspected of possession of large quantity of Narcotics. After authorization by Commandant of Midshipment based upon confidential police information the Patrolman and I proceeded to Midn Echline's room. Search was conducted and 1000 M.M. in soap & Midshipment was apprehended by Patrolman and removed to Kings Point Police Station.

Your deponent is _____ (relationship to property, if pertinent)

Your deponent asserts that he did not give any person permission to perform the above described act.

ANY FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECT 210.45 OF THE PENAL LAW.

Signature of deponent: [Signature] **U.S.M.A.**
 Date: 2-20-76 Witness: [Signature] Rank: Pat Surname: Vernasca Shield: 209 **1A-32**

STATEMENT OF CHIEF FRANK HARTZ re:

Patrolman A. Vernaskas, shield #209

Ref: Phone conversation Chief Hartz and Lt. H. J. Richards

1. Chief Hartz confirmed that the police report of February 20, 1976 concerning the case in question constitutes an official statement of Patrolman Vernaskas who was on a day off and not available for interview by this Officer. All parties were read their rights and are on record for the information they are quoted for in the official jacket.

2. Chief Hartz is the Officer in charge of the Kings Point Police.

Harry J. Richards

LT, USMS

Investigating Officer

LICE DEPARTMENT
SCIENTIFIC INVESTIGATION BUREAU

SIB No. N-975-1976
DD No. 6-457-1976

THE PEOPLE OF THE STATE OF NEW YORK,
- against -

Kenneth H. Elkland, Defendant
USMSA Kings Point Academy, Kings Point, N.Y.

I, Anthony Lombino of the
Nassau County Police Department, Scientific Investigation Bureau depose and say that on the 23
day of Feb, 19 76, I have received material from N.O. Evidence
Locker # 13

I have determined that the submitted material contains:

SUBSTANCE(S)

contaminated

AMOUNT(S)

1.697g

I hereby certify that
I am a public servant
of the County of Nassau, New York
and that the above report
was made by me

Technician Albino

I understand that any false statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45
of the Penal Law of the State of New York.

Feb 24, 1976 1405
Date and Time

D.A. Lombino
Scientific Investigation Bureau

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02104-02107

2. UNIFORM: Athletic Uniform shall be worn at athletic fields and areas. (See Prescribed Uniforms COMINST 07301.1).

02104. ATTEMPTS:

1. GENERAL: Any attempt to violate the Standards of Conduct (see Article 03101.1) shall be treated as if the violation were actually committed.

02105. DANGEROUS DRUGS:

1. DEFINITION: For the purpose of this regulation, the term "Dangerous Drugs" will include all forms of stimulant, depressant, hallucinogenic, narcotic and other substances classified as "Dangerous Drugs" by New York State or Federal law.

2. ACTION: A Midshipman formally charged and found guilty by an Executive Board, convened by the Superintendent, of illegal possession, use or transfer of any dangerous drug, either on board the Academy or ashore, will be subject to dismissal.

02106. DISRESPECTFUL AND PROFANE LANGUAGE:

1. GENERAL: No Midshipman shall:

a. Use contemptuous, disrespectful, or insolent language/gestures directed toward his superior Officer or toward any person in authority.

b. Use profane, obscene, or vulgar words in official discourse, or in personal conversation.

2. ACTION: Violation of this regulation may be treated as a serious and deliberate violation of the standards of conduct of the Academy and may result in disciplinary action as outlined in Article 03101.3b of these regulations. (Class II offenses).

02107. DIVINE SERVICES:

1. PERSONAL WORSHIP: Whenever practical, facilities shall be provided for each Midshipman to observe religious worship of his choice in accordance with the dictates of his Church.

2. SERVICES: Divine services will be conducted as indicated in the Plan of the Day. Special services peculiar to a religion will be held if appropriate arrangements can be made.

I. CLASS I

<u>NO.</u>	<u>OFFENSE</u>	<u>DEMERITS</u>
101	Absent unauthorized while restricted	Class I
102	Breaking and entering any Academy building	Class I
103	Conduct, unbecoming a Midshipman reflecting on character	Class I
104	Conviction, felonious, by any State or Federal Court of Law	Class I
105	Dangerous Drugs, possession, sale or use of	Class I
106	Destruction of Government property	Class I *
107	Fire arms, unauthorized possession of	Class I
108	Government property, destruction of	Class I
109	Government property, unauthorized use of	Class I *
110	Guest, unauthorized in quarters	Class I *
111	Hazing	Class I
112	Property, destruction of	Class I

* May be classified as Class II offense

SUB-SECTION 2MIDSHIPMAN ROOMS08201. PRESCRIBED STANDARD OF MAINTENANCE:

1. GENERAL: Midshipmen rooms shall be maintained in a high standard of order and cleanliness. Decks, bulkheads (walls), door frames, pipes, cabinets, chests, chairs, etc., shall not be defaced in any manner and shall be clean and spotless.
2. CONDITION OF ROOMS: Midshipman rooms may be inspected at any time by authorized personnel for purposes of observation of room condition and to check for violations of USMMA Midshipmen Regulations. All Midshipman rooms are to be maintained in Condition "B" (see Article 08205, Midshipmen Regulations) during the period 0740-1200. After 1200, Midshipmen rooms are still subject to inspection, but need only be maintained in Condition "A" (Orderly).
3. CONDITION "A" (ORDERLY): Condition "A" requires the room to present a neat and orderly appearance and shall have:
 - a. Bunks made (except during clean linen days and when being used).
 - b. No gear adrift.
4. CONDITION "B" (READY FOR INSPECTION): Condition "B" requires the room to have:
 - a. Met the room standard requirements of Article 08205.
 - b. Deck free of all dirt.
 - c. Windows, mirrors, glass shelves and sink free from dirt, finger marks or spots. Sinks shall be dry.
 - d. Cobwebs, dust, finger marks, shoe marks and spots removed.
 - e. All furniture dusted and polished.
 - f. Radiators, light fixtures, doors and transoms free from dirt, dust or marks.
 - g. All damage noted in the damage log, maintained in the Battalion Office.
5. PERSONAL DRAWER: Each Midshipman is permitted to store items of a personal or valuable nature in the top drawer of his Chest of Drawers. If this drawer is locked, it will be treated as a personal drawer by any inspecting Officer.

It may be opened in the presence of the Midshipman for inspection relative to any violations of Midshipmen Regulations, but shall not be opened in his absence. Midshipmen wishing to use this drawer as a personal drawer are advised to keep the drawer locked.

6. PERSONAL BOXES: Midshipmen are not authorized the use of personal boxes. Article 08205.3.b of Midshipmen Regulations states that only small boxes for sewing and writing materials and small trinkets will be permitted in the chest of drawers.

08202. ROOM CAPTAIN (MIDSHIPMAN IN CHARGE OF ROOM):

1. GENERAL: The Midshipmen in each room shall rotate weekly, commencing at Reveille on Monday, the duty of room captain, Midshipman in charge of room. In a room of one occupant, the occupant will have the duty of room captain.

2. STAND-BY DUTIES: When the Room Captain is hospitalized or on an authorized absence from the Academy, the duties of room captain shall be assumed by a roommate according to alphabetical order if need be. If the Room Captain is a single occupant, he shall not be relieved of the duties of room captain except when hospitalized for emergency medical treatment.

08203. INSPECTION OF ROOMS:

1. GENERAL: Midshipman rooms may be inspected at any time by authorized personnel.

2. DAILY ROOM INSPECTION: Midshipman rooms will be inspected each weekday (except holidays) at 0740 by a Midshipman Officer assigned by the Company Commander and may be inspected by an Officer of the Commandant's Staff. Rooms shall be in Condition "B" during this period (0740-1200).

3. WEEKLY ROOM INSPECTION: Rooms will be inspected each week, at times prescribed by the Commandant of Midshipmen, by Midshipman Officers assigned by the Battalion Commander and by Commissioned Officers assigned by the Commandant.

a. All Midshipmen shall be present at weekly inspection unless specifically authorized otherwise in writing by the Commandant of Midshipmen.

b. Midshipmen shall stand at Parade Rest at their bunks except when the inspecting party is in their room when they shall stand at Attention.

c. All lights shall be turned on at the sounding of the Inspection Call.

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UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK

COMINST 02105.2A
COM:EWK
August 1, 1974

COMMANDANT'S INSTRUCTION 02105.2A

Subj: DRUG ABUSE

Ref: (a) SUPERINTENDENT'S INSTRUCTION 74-13

Reference (a) has been issued and is quoted herewith for the information and guidance of all concerned and for the purpose of obtaining wider distribution:

SUPERINTENDENT'S INSTRUCTION 74-13

Subj: Drug Abuse

Ref: (a) USMMA MIDSHIPMEN REGULATIONS 1974, Article 02105,
Subj: Dangerous Drugs

1. PURPOSE: To elaborate on the present Academy Drug Policy as outlined in Article 02105 of the USMMA Midshipmen Regulations 1974.

2. SCOPE: The Academy Drug Policy outlined herein shall apply to all Midshipmen in the Corps, both on board the Academy, at sea and ashore.

3. EFFECTIVE DATE:

4. GENERAL ACADEMY POLICY: The United States Merchant Marine Academy does not condone the abuse of any drug. All reported incidents of drug abuse will be investigated, and any Midshipman found guilty, by State or Federal Courts or by an Academy Board investigating a charge of violation of USMMA Regulations, will be dismissed.

5. PROCEDURES: The Academy has investigated and will continue to investigate reported instances of drug abuse. The Academy will treat all reported information and the identity of the bearer confidentially.

a. When the Commandant of Midshipmen feels that information obtained about an individual Midshipman gives him a definite reason to suspect that the Midshipman is involved in one or more instances of drug abuse, he will confront the Midshipman with the nature and extent of the information and offer the following alternatives:

(1) The Midshipman may either resign without prejudice, or

(2) The Commandant may either ask the Superintendent to convene an Executive Board to investigate the case, or

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Subj: DRUG ABUSE

(3) The Commandant may transmit the information to an appropriate law enforcement agency with the understanding that the Academy will cooperate fully with any investigation, and that any information derived from the investigation will be used by the Academy for internal disciplinary proceedings, and may be used for criminal prosecution by the outside agency.

b. A Midshipman formally charged and found guilty by an Executive Board, convened by the Superintendent, of illegal possession, use or transfer of any dangerous drug, either on board the Academy or ashore, will be subject to dismissal.

c. A Midshipman formally charged ashore by State or Federal Authorities for violations of any civil or criminal laws regarding the illegal possession, use or transfer of dangerous drugs and subsequently found guilty in a court of law, will be dismissed from the Academy.

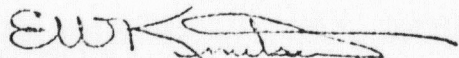
6. THE ACADEMY AND PUBLIC LAW: Midshipmen who violate Federal or State Laws relative to drug abuse are subject to the penalties prescribed by law. The Academy is subject to concurrent Federal, State and local jurisdiction and it shall in no way provide protection from the law.

7. CANCELLATION: SUPINST 74-13 will remain in effect until cancelled or superseded by the Superintendent or higher authority.

/Signed/

A. B. Engel
Rear Admiral, USCG (Ret.)

FILING INSTRUCTIONS: This COMINST shall be filed in the front of the USNMA Midshipmen Regulations Book in its proper numerical order and shall remain in effect until cancelled or superseded by the Commandant of Midshipmen or higher authority.



E. W. Knutsen
Captain, USMS
Commandant of Midshipmen

Dist: See Midn. Regs. 1974, Article 01202-List I
+ All Midn. Rooms

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